

REMARKS

Reconsideration and allowance of the captioned application in view of the foregoing amendments and the remarks which follow are respectfully requested.

The claims in the application were claims 1-7. By this amendment, claims 8-10 have been added. Accordingly, the claims now in the application are claims 1-10.

New claim 8 recites a hair oil in which said glyceride fatty ester:hydrocarbon oil weight ratio ranges from 90:10 to 10:90. Support for this new claim 8 may be found throughout the specification, as for example at original claim 6 on page 11 of the specification.

New claim 9 recites a hair oil in which said glyceride fatty ester:hydrocarbon oil weight ratio ranges from 80:20 to 20:80. Support for new claim 9 may be found throughout the specification, as for example at original claim 6 on page 11 of the specification.

New claim 10 recites a hair oil which has the transition language "consisting essentially of". Support for this new claim 10 may be found throughout the specification, as for example at claim 1 on page 10 of the specification.

Entry, examination and allowance of new claims 8-10 are respectfully requested.

Claim 6 has been rejected under 35 USC §112, second paragraph for having broad ranges or limitations recited together with narrow ranges or limitations. This rejection has been obviated by the above amendments to claim 6 which caused that claim to have only one range. New claim 8 and 9 separately recite the other range of ratios that were originally in claim 6.

In view of these amendments, it is respectfully submitted that the rejection under 35 USC §112 has been obviated, and withdrawal of this rejection is respectfully requested.

Claims 1, 3 and 5-7 have been rejected under 35 USC §102(b) as being anticipated by Kawasaki. This rejection is respectfully traversed.

In making this rejection, the Office Action is apparently relying upon Example 51 which appears at column 33, lines 55-67 of Kawasaki. However, the preparation of Example 51 in Kawasaki is not clearly set forth. In the first instance, the undersigned was not able to determine what liquid paraffin (70 seconds) meant. In the second instance, the liquid paraffin, castor oil, and S26 portions of the hair oil total 100%. Therefore, it is not seen how perfume, perfume solubilizer, and color and antioxidant could also be added to this composition as is listed in Example 51.

Finally, no steps for preparing this hair oil are given. At column 33, lines 65-67, Kawasaki merely recites that a hair oil was prepared according to the formula. Therefore, Kawasaki is not a proper enabling disclosure under 35 USC §102 (see MPEP 2131.01; see *In re Donohue*, 226 USPQ 619 (Fed. Cir. 1985)). Therefore, withdrawal of this rejection under 35 USC §102(b) is respectfully requested.

Claims 1, 3-4 and 5-7 have been rejected under 35 USC §102(b) as being anticipated by Jones. This rejection is respectfully traversed.

Column 1, lines 10-13 refers to the composition in Jones as a cream. By contrast, the claimed compositions are hair oils. The term "cream" refers to dispersions as can be seen from enclosed page 574, Volume 3, Cosmetics Science and Technology, Balsam et al. (1974). An "oil" is a liquid or can be easily liquified on heating and has an oily or unctuous consistency (see enclosed page 808, Merriam-Webster's Collegiate Dictionary, Tenth Edition, 1996).

Thus it can be seen that Jones does not anticipate the present claims and withdrawal of this rejection under 35 USC §102(b) is respectfully requested.

Claims 1-6 have been rejected under 35 USC §103(a) as being unpatentable over GB 2,289,219 ('219) by itself or in view of applicants' statements that specific sources for vegetable derived glyceride fatty esters are castor oil and sesame oil.

The compositions of '219 are organic solutions (see page 3, first full paragraph of '219).

Moreover, process claims 12, 13, 14, and 15 speak of homogenizing the final compositions which are solutions in '219. By contrast, the presently claimed compositions are oils. It would not be obvious to arrive at the claimed oils from the organic solutions of '219 which can include onion juice, garlic, petroleum jelly, sesame oil, castor oil, mineral oil, herbal extract, honey, and egg yolk, as well as ethanol.

The further statements in applicants' specification that castor and sesame oil contain glyceride fatty esters, in no way renders obvious the present compositions when taken with '219.

Claims 1-7 have been rejected under 35 USC §103(a) as being unpatentable over Vernon. This rejection is respectfully traversed.

As noted in the Office Action, Vernon requires 60 to 70% petrolatum. Petrolatum is not the light mineral oils or oils from petrolatum jelly that are set forth in the specification.

Example I at column 3, lines 20-23 state that when the composition of Vernon is allowed to cool to room temperature, it produces a gel. A "gel" is a colloid which can be a jelly (see enclosed pages 483 and 484 of Merriam-Webster's Collegiate Dictionary, Tenth Edition, 1996). This is in contrast to the claimed compositions which are

described above. Consequently, Vernon fails to render obvious claims 1-7 and withdrawal of this rejection under 35 USC §103(a) is respectfully requested.

Claims 2 and 4 have been rejected under 35 USC §103(a) as being unpatentable over Kawasaki by itself or in view of applicants' statements that vegetable derived, glyceride fatty acid esters can be found in castor oil and sesame oil. This rejection is respectfully traversed.

It has already been pointed out above that Example 51 of Kawasaki fails to provide an enabling disclosure for a hair oil composition containing 33% paraffin and 33% castor oil. Example 51 does list the ingredient, castor oil, however, since Example 51 is inoperative, it would not suggest to one of ordinary skill in the art to prepare the claimed hair oils. It is noted again that Example 51 of Kawasaki fails to provide for a manufacturing process for its hair oils. Withdrawal of this rejection is respectfully requested.

Claim 2 has been rejected under 35 USC §103(a) as being unpatentable over Jones by itself or in view of applicants statement that glyceride fatty esters can be found in castor oil and sesame oil. This rejection is respectfully traversed.

While it is conceded that Jones describes the preparation of compositions that have light petrolatum, it is noted that Jones at column 1, lines 10-13 describe its compositions as creams. By contrast, the claimed compositions are hair oils. It is not seen how one of ordinary skill in the art would proceed from the creams of Jones to the hair oils of the present invention even in light of the statement in the present specification that glyceride fatty esters can be found in castor oil and sesame oil.

Newly added claim 10 has "consisting essentially of" transition language which makes it further removed from the cited publications by excluding extraneous ingredients from the compositions recited therein. Thus, new claim 10 is further removed from the compositions of Kawasaki which require the presence of boric acid

esters (see column 50, lines 10-19 of Kawasaki); and it is further removed from the compositions of Jones which require paraffin wax, biotin, keratin protein and polysorbate 80 (see column 2, lines 52-58 of Jones); and it is further removed from the compositions of Vernon which require sulfur, mustard oil and propanetriol (see column 3, lines 45-50 of Vernon); and it is further removed from the compositions of GB '219 patent which requires a non-cyclic organic sulfur compound (see page 11, lines 1-4 of the GB '219 patent).

Since all of the claims are in proper form and have been patentably distinguished over the publications of record, an early Notification of Allowance is respectfully requested.

Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendment. The attached page is captioned "Version with markings to show changes made".

If a telephone conversation would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided.

Respectfully submitted,



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201-840-2963

VERSION WITH MARKINGS TO SHOW CHANGES MADE

In the Claims

Claim 6 has been amended as follows:

6. (Amended) A hair oil according to claim 1, wherein in which said glyceride fatty ester:hydrocarbon oil weight ratio ranges from 95:5 to 5:95, preferably from 90:10 to 10:90, most preferably from 80:20 to 20:80.

New claim 8 has been added.

New claim 9 has been added.

New claim 10 has been added.

Cosmetics

SCIENCE AND
TECHNOLOGY

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A Wiley Interscience Publication
JOHN WILEY & SONS
New York • Chichester • Brisbane • Toronto • Singapore

TABLE I. Identities of Dispersions

Name	Continuous phase	Dispersed phase
Aerosol	Gas	Liquid
Aerosol (dust)	Gas	Solid
Foam	Liquid	Gas
Lotion	Liquid	Liquid
Suspension or dispersion	Liquid	Solid
Foam	(Semi-)solid ^a	Gas
Gel, cream, ointment	(Semi-)solid ^b	Liquid
Cream, ointment, suspension	(Semi-)solid ^a	Solid
Rigid foam	Solid	Gas
?	Solid	Liquid
?	Solid	Solid

^a Gel, paste, or wax.

^b Paste, or wax.

Definitions

An *emulsion* is a two-phase system consisting of two incompletely miscible liquids, the one being dispersed as finite globules in the other. Emulsions, liquid dispersed in liquid, are one of the more frequently encountered cosmetic forms of a modified Ostwald classification (the manners of dispersion of the three common states of matter: liquids, solids, and gases). Historical cosmetic nomenclature of several of these classifications is shown in Table I. In this table, reference is made to an additional "state of matter," that of the semi-solid paste or wax, for practical reasons.

A *suspension* is generally thought of as a two-phase system closely related to an emulsion, in which the dispersed phase is a solid. Some cosmetics are pigmented, hence, are both emulsions and suspensions. A *foam* is a two-phase system, similar to an emulsion, where the dispersed phase is a gas. An *aerosol* is the inverse of a foam, air being the continuous phase and liquid or solid being the dispersed phase. The word *dispersion*, though frequently used, is relatively ambiguous with relation to emulsification. It is variously used to refer to emulsions, suspensions, and aerosols. *Solubilization* is popularly used to refer to the act of preparing an extremely fine particle size emulsion or suspension, the particle size being so small that the product appears clear to the eye.

True solution is not achieved in solubilization, as is easily apparent by

checking for Tyndall effect. Recently, the term *microemulsion* has been used (7-11) for what seems to be a special case of solubilization, using low levels of surfactant under highly critical conditions (see "Solubilization," p. 621). A *cream* (*emulsion*) is usually an emulsion that exhibits a certain degree of body, or apparent viscosity sufficient to form a heavy fluid or a soft, easily deformed gel. A *lotion*, on the other hand, is pourable and is usually a bodied emulsion that exhibits a given apparent viscosity. An *ointment*, usually a term reserved for pharmaceuticals, has been in the past a semi-solid based on the nature of the continuous phase, such as petroleum. However, this apparent viscosity may be achieved by proper emulsification; thus an ointment may include a wider range of formulas than before. The term *aerosol* can have two notably different meanings. The popular use of the word denotes a pressurized package; the technical definition refers to minute particles of liquid or solid dispersed in a gas.

A *surface active agent* is a compound which reduces the work required to effect contact between two surfaces; it reduces surface and interfacial tension. It usually attains this characteristic by virtue of combining hydrophilic and lipophilic groups in one molecule (see "Nature and Properties of Emulsifiers," p. 600).

The term *emulsifier* is often misused. Emulsifiers are a subdivision of the general class of surface-active agents. Other subdivisions are wetting agents, solubilizers, detergents, suspending agents, etc. These terms are frequently used indiscriminately, the only justification being other common classification as surface-active agents and the fact that the uses of many do overlap in the subclassifications. Of particular interest in the field of cosmetics is the closely related term, *solubilizing agent*. For solubilizing oils in water, these are merely a special type of O/W emulsifier used in sufficient concentration to produce a clear O/W emulsion (by virtue of extremely fine particle size). Special designations have been devised for oil-water systems to indicate which is the internal and which is the external phase. *Oil-in-water emulsions* have the oil as the internal phase and water as the external phase. In *water-in-oil emulsions*, water is the internal phase in oil, which is the external phase. Circumstances exist where the emulsion type, whether O/W or W/O, is not clearly defined; the internal and external phases, instead of being homogeneous, each contain portions of the opposite phase. Such an emulsion is said to be a *dual emulsion*.

Much less common, in fact rare, is the *nonaqueous emulsion*. Here, the terms O/W and W/O are inappropriate. Likewise, the selection of emulsifiers that will exhibit true surface activity in essentially nonaqueous situations is difficult (12-13), and few truly nonaqueous emulsions show sufficient stability to be commercially acceptable.



Merriam- Webster's Collegiate® Dictionary

TENTH EDITION

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The

Library of Congress Cataloging in Publication Data

Main entry under title:

Merriam-Webster's collegiate dictionary. — 10th ed.

p. cm.

Includes index.

ISBN 0-87779-708-0 (unindexed : alk. paper). — ISBN 0-87779-709-9 (indexed : alk. paper). — ISBN 0-87779-710-2 (deluxe : alk. paper). — ISBN 0-87779-707-2 (laminated cover).

1. English language—Dictionaries. I. Merriam-Webster, Inc.

PE1628.M36 1996

423—dc20

95-36076

CIP

Abbreviations

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